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SURETYSHIP — SURETY'S DEFENSES: ON GENERAL PRINCIPLES OF CONTRACT — DEFAULT PRIOR TO SURETY'S CONTRACT.—The defendant was surety on the bond of a town treasurer for his second term. The treasurer had defaulted during his first term, but his report made at the end of that term showed an apparent balance on hand. *Held*, that the report is conclusive upon the surety for the second term. *Cowden v. Trustees of Schools*, 85 N. E. 924 (Ill.).

The real breach of the treasurer's duty for which the surety is held is the default and not the false report. But it is argued that the report estops the principal, and therefore his surety, to deny the existence of the reported balance, and so, that the surety is liable as if the misappropriation had occurred during the second term. See *City of Chicago v. Gage*, 95 Ill. 594, 626-632. The basis of estoppel, however, is reliance on a representation resulting in damage. *Smith v. Powell*, 98 Va. 431. In the present case damage could result only if the sureties for the first term were released by the report. But the sureties on a bond cannot be released by mere book entries. *State v. Churchill*, 48 Ark. 426, 450. Otherwise the principal by a false report might defraud his creditors when there was no surety for the second term. There is thus no basis for estoppel. *Goodwin v. State*, 81 Ind. 109. Hence the usual rule, that only sureties on a bond in force when the defalcation occurred are liable, should be applied. To determine when the defalcation occurred the report is *prima facie* evidence but capable of being rebutted. *Bissell v. Saxton*, 66 N. Y. 55.

TAXATION — PARTICULAR FORMS OF TAXATION — ASSESSMENT BY THE FRONT FOOT RULE UNDER THE POLICE POWER.—A municipality levied a special assessment by the front-foot rule on the property of a railroad company for the cost of a public sanitary sewer. *Held*, that the assessment is valid, since special assessments for sewer purposes may be made under the police power, which does not require return to the property owner of proportional benefits. *Chic., etc., Ry. Co. v. City of Janesville*, 118 N. W. 182 (Wis.). See NOTES, p. 293.

TORTS — LIABILITY OF MUNICIPAL CORPORATION — INJURY TO PROPERTY RIGHTS.—A city, while exercising a governmental function, created a nuisance by the use of soft coal, which injured the plaintiff's property. *Held*, that the city is liable, as it cannot take the plaintiff's property without compensation. *Gordon v. Village of Silver Creek*, 127 N. Y. App. Div. 888.

For a discussion of liability where constitutional rights are infringed in the course of a governmental undertaking, see 22 HARV. L. REV. 54.

TRESPASS TO REALTY — NECESSITY AS AN EXCUSE.—The plaintiff while sailing with his family was compelled by a violent storm to moor his boat to the defendant's dock to save the boat and the people in it. The defendant, by his servant, cast off the boat, with the result that it was wrecked and the plaintiff injured. *Held*, that the plaintiff has a good cause of action. *Ploof v. Putnam*, 71 Atl. 188 (Vt.). See NOTES, p. 296.

BOOKS AND PERIODICALS.

I. LEADING LEGAL ARTICLES.

ADVISORY OPINIONS FROM JUSTICES. *Lucilius A. Emery*. Pointing out the objections to the rule in Maine and Massachusetts requiring such opinions. 2 Me. L. Rev. 1.

ARE NATURAL WATER POWERS PUBLIC PROPERTY? *W. A. Coutts*. Contending that there are no private property rights in natural water powers. 67 Cent. L. J. 356.

CHARITABLE BEQUESTS. *A. C. Black*. A discussion of Scotch law on the subject. 20 Jurid. Rev. 227.

COLONIAL APPEALS TO THE PRIVY COUNCIL. *Anon.* Distinguishing between appeals as of right and those as of grace. 53 Sol. J. 27.

- COMMUNICANTS AND THE DECEASED WIFE'S SISTER'S ACT, 1907. *G. A. Ring*. A discussion of a decision in an Ecclesiastical Court construing the act. 34 L. Mag. & Rev. 68.
- COMMUTATION TICKETS AND RATE REGULATION. *Borden D. Whiting*. Contending that certain decisions which hold that the Interstate Commerce Commission may not require special rates for commutation tickets are not sound. 8 Colum. L. Rev. 636.
- DELAYS OF THE LAW, THE. *William H. Taft*. Emphasizing the injustice caused by delay and suggesting remedies. 18 Yale L. J. 28.
- EARLY HISTORY OF THE ATTORNEY IN ENGLISH LAW, THE. *Heinrich Brunner*. 3 Ill. L. Rev. 257.
- EFFECT OF WORDS OF CONDITION IN A DEED. *Albert Martin Kales*. Submitting that whether words amount to a condition or to a covenant should be determined without regard to external circumstances. 3 Ill. L. Rev. 280.
- EMPLOYERS' LIABILITY TO WORKMEN. *Anon.* A comparison of the English and Canadian statutes. 44 Can. L. J. 716.
- EXTENT OF THE JUDICIAL POWER OF THE UNITED STATES, THE. *Simeon E. Baldwin*. Criticizing certain recent dicta which intimate that all judicial power not expressly reserved was given to the Supreme Court by the Constitution, including that commonly regarded as vested in the states. 18 Yale L. J. 1.
- FAR-REACHING DECISION BY THE COURT OF APPEALS, A. *W. A. Purrington*. A discussion of a New York case which holds that a physician's privilege is waived if his patient testifies. 15 Bench & Bar 53.
- GREAT JUDICIAL CHARACTER, ROGER BROOKE TANEY, A. *Charles Noble Gregory*. 18 Yale L. J. 10.
- LAW IN ITS RELATION TO THE CHILD, THE. *Lewis Hochheimer*. 67 Cent. L. J. 395.
- MECHANICAL JURISPRUDENCE. *Roscoe Pound*. Objecting to unreasonable technicalities. 8 Colum. L. Rev. 605.
- NEW YORK CLEARING HOUSE DURING PANIC AND VIEWS ON GUARANTEE BANK DEPOSITS AND CURRENCY LEGISLATION. *Alexander Gilbert*. 6 Law & Com. 351.
- ORGANIC CONCEPTION OF THE TREATY-MAKING POWER VS. STATE RIGHTS AS APPLICABLE TO THE UNITED STATES, AN. *Charles Sumner Clancy*. 7 Mich. L. Rev. 19.
- OUR UNDERPAID JUDICIARY. *Lindsay Russell and Ralph W. Page*. 41 Chi. Leg. N. 144; 12 L. N. (Northport) 168.
- SOME EXPERIMENTS IN DIRECT LEGISLATION. *Robert Treat Platt*. A study of the working of the Initiative and Referendum in Oregon. 18 Yale L. J. 40.
- SOME MODERN APPLICATIONS OF THE WRIT OF PROHIBITION. *John A. Ferguson*. 6 Com. L. Rev. 16.
- SOME NEW ASPECTS OF PARTNERSHIP BANKRUPTCY UNDER THE ACT OF 1898. *Charles M. Hough*. Suggesting that the act gives reason to believe that a partnership should be considered more as an entity than heretofore. 8 Colum. L. Rev. 599.
- TESTAMENTARY POWER UNDER HINDU LAW. *S. Venkatachariar*. 10 Bombay L. Rep. 177.
- WRIT OF HABEAS CORPUS, THE. *Clarence C. Crawford*. A history of the writ. 6 Com. L. Rev. 23.

II. BOOK REVIEWS.

THE TREATY POWER UNDER THE CONSTITUTION OF THE UNITED STATES.
By Robert T. Devlin. San Francisco: Bancroft-Whitney Company. 1908.
pp. lxx, 864. 8vo.

This stout volume covers the law of treaties under our Constitution and of cognate subjects arising therefrom. The constitutional provisions are first dealt with; then follow a consideration of the making, taking effect, and termination of treaties; of their construction; of the extent of the treaty-making power; of the legal questions relating to their conflict with national and state legislation; of particular classes of treaties, such as those cession extradition, and with the Indians. The book concludes with chapters on our foreign ambassadors, ministers, and consuls; naturalization and expatriation; respon-